



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 25, 73, and 76**

**[MB Docket Nos. 17-317, 17-105; FCC 19-69]**

**Electronic Delivery of MVPD Communications; Modernization of Media Regulation**

**Initiative**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission modernizes the carriage election notice rules by permitting broadcasters to post their carriage elections online and send notices to covered multichannel video programming distributors (MVPDs) by e-mail only when first electing carriage or changing their carriage election status from must carry to retransmission consent or vice versa. Additionally, all parties will be required to post their contact information online on Commission databases.

**DATES:** *Effective date:* This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Compliance date:* Compliance will not be required for §§ 25.701, 73.3526, 73.3527, 76.64, and 76.66(d) until the Commission publishes a document in the Federal Register announcing the compliance date.

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (*Order*), FCC 19-69, in MB Docket Nos. 17-317, 17-105, adopted on July 10, 2019, and released on July 11, 2019. The complete text of this document is available electronically via the

search function on the FCC's Electronic Document Management System (EDOCS) web page at [https://apps.fcc.gov/edocs\\_public/](https://apps.fcc.gov/edocs_public/) ([https://apps.fcc.gov/edocs\\_public/](https://apps.fcc.gov/edocs_public/)). The complete document is available for inspection and copying in the FCC Reference Information Center, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, DC 20554 (for hours of operation, see <https://www.fcc.gov/general/fcc-reference-information-center>). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) (mail to: [fcc504@fcc.gov](mailto:fcc504@fcc.gov)) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## **Synopsis**

1. *Introduction.* In this *Report and Order*, we modernize the Commission's carriage election notice rules by permitting broadcasters to post their carriage elections online, and to send notices to covered multichannel video programming distributors (MVPDs) by e-mail only when changing their carriage election status. This approach will replace our current regulatory framework, under which a broadcast station typically must send a paper notice via certified mail to covered MVPDs every three years, regardless of whether its carriage election changes or not. For the purposes of this Order, a covered MVPD is a cable operator, Direct Broadcast Satellite (DBS) provider, or any other MVPD for which broadcasters currently elect or request carriage and which uses the online public file and/or Cable Operations and Licensing System (COALS). To make our new approach workable, we also will require covered MVPDs to upload e-mail and phone contact information to either the COALS database or to the online public inspection file. In addition, in the *Further Notice of Proposed Rulemaking* published elsewhere in this issue of the Federal Register, we seek comment on whether and how the modernized framework described in this Order should be extended to certain broadcasters and covered MVPDs that do not use the Commission databases referenced in this Order. Through this proceeding, the

Commission continues its efforts to modernize regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

2. *Background.* The Commission has long contemplated the potential for an incubator program to provide new sources of capital and support to entities that may otherwise lack access to financing or operational experience. In concept, an incubator program seeks to provide an established broadcaster with an inducement in the form of an ownership rule waiver or similar benefit to invest the time, money, and resources needed to facilitate broadcast station ownership by new and diverse entrants. An incubator program contemplates that, in exchange for a defined benefit, an established company could assist a new owner by providing “management or technical assistance, loan guarantees, direct financial assistance through loans or equity investments, training, or business planning assistance.”

3. Under the Communications Act of 1934, as amended (the Act), full power television broadcast stations, and certain low power stations and translator stations, are entitled to mandatory carriage of their signal (also known as “must carry”) on any cable system located within their local market, also known as their designated market area (DMA). Full power stations also have carriage rights on any DBS provider providing local service into the market. Each satellite carrier providing secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all other television broadcast stations located within that local market. This type of carriage is commonly known as “carry one, carry all.” Carry one, carry all refers to the fact that DBS providers are not required to carry any local broadcast stations in a market, but must carry all stations with carriage rights upon request if any local station is carried (with certain narrow exceptions). The DBS must-carry/retransmission consent regime otherwise functions in a manner very similar to the cable regime. But no low power station shall be

entitled to insist on carriage under this section on DBS providers. If a broadcast station asserts its must-carry rights, the MVPD may not accept or request any compensation whatsoever from the broadcaster in exchange for carriage of its signal. Alternatively, commercial broadcast stations with carriage rights may elect “retransmission consent.” The terms of retransmission consent frequently include, among other negotiated terms, compensation from the MVPD to the broadcaster in exchange for the right to carry the station’s signal. If the broadcaster and MVPD cannot reach a retransmission consent agreement, however, the MVPD is prohibited from carrying the broadcaster’s signal. Thus, commercial broadcasters are presented with a carriage choice -- elect mandatory carriage and forego compensation while assuring carriage, or elect retransmission consent and forego assured carriage while retaining the possibility of compensation for carriage. Noncommercial educational stations (NCEs) are entitled to must carry, but not to elect retransmission consent. Any requests NCE stations make, including those made at the outset of their or a cable system’s operation, must be included in their public file “for the duration of any period to which the request applies. When the Commission implemented the statutory provisions establishing the must-carry/retransmission consent regime, it adopted a requirement that each commercial television broadcast station provide notice to every cable operator every three years electing either mandatory carriage or retransmission consent. Carriage elections by commercial television stations must be made by October 1 every three years, for the three-year period beginning the following January. A similar triennial notice requirement, applying to both commercial and noncommercial television broadcast stations, later was adopted as part of the carry one, carry all regime for DBS providers. Failure by a broadcaster to provide timely notice of its chosen election results in a default election of must carry with respect to cable operators, but a default of retransmission consent with respect to DBS providers.

4. Currently, the rules direct each commercial television broadcast station to send a triennial carriage election notice, via certified mail, to each cable system or DBS provider serving its market, and each NCE station to send such notices to DBS providers. As discussed herein, NCE stations are not required to make triennial cable carriage elections. In addition, the rules generally also require stations to place triennial carriage election statements in their online inspection files, but as explained in the *Further Notice of Proposed Rulemaking*, neither qualified low power television stations nor TV translator stations are required under our rules to maintain public inspection files. The notice must state whether the station has elected mandatory carriage or retransmission consent. The rules applicable to DBS provider notices also require that the certified mail letter be “return receipt requested.”

5. In response to the initial Public Notice in the Media Modernization proceeding, a number of commenters expressed concerns about, and proposed changes to, the carriage election notification process. Specifically, ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association said the current “requirement burdens television stations because there is no central repository for the information necessary” to send election notices. Many of these commenters proposed that broadcasters should be able to satisfy their carriage election requirement by sending an e-mail to an MVPD or simply uploading the carriage election into their public file. But the American Cable Association argued that continued reliance on certified mail is essential and AT&T proposed allowing notice to be sent via any express mail service, rather than only by certified mail, return receipt requested. Although some commenters in the Media Modernization docket proposed even broader changes to the must-carry/retransmission consent system, in this proceeding we are focused exclusively on the way broadcasters communicate carriage elections and requests. In response to these concerns, the Commission adopted a *Notice of Proposed*

*Rulemaking* (NPRM) (83 FR 2119, Jan. 16, 2018) and opened this docket in December 2017.

The NPRM sought comment on alternative means of notifying covered MVPDs about broadcaster carriage elections that would “satisfy the needs of broadcasters and MVPDs.” The instant item adopts changes to §§ 76.64(h) and 76.66(d), as proposed in the NPRM, as well as conforming edits to other related rules. Almost every commenter responding to the NPRM maintained that there are flaws in the current election notification system. For example, NAB estimates that station groups are spending more than \$1,000 per station, per carriage election cycle, on carriage elections, between searching for MVPD contact information, outside law firm expenses, and certified mail costs. Despite this time and expense, broadcasters claim that they are often still not certain whether they have correctly identified and verified cable operators’ contact information, and “send duplicative notices to avoid the severe consequences of making a defective retransmission consent election.” To avoid the significant legal and financial consequences that arise from the failure to make timely elections, and to reduce the costs and resources incurred while making the election, some commenters suggested ways to modernize the carriage election process. For example, ION supported “a simple requirement that stations post their elections in their online public inspection files.” APTS proposed that the “obligation to re-file satellite carriage requests every three years for NCE-TVs should be eliminated.” NCTA proposed that broadcasters submit their carriage election notification via e-mail to a single point of contact for each operator. DISH, though favoring the status quo, proposed the creation of a Commission-hosted website through which broadcasters can elect carriage, a proposal endorsed by AT&T. AT&T itself proposed to “permit broadcasters to use express delivery mail with tracking instead of certified mail.” With the exception of the DBS providers, commenters generally now support the Joint Proposal, which synthesizes various aspects of this wide array of proposals.

6. On December 7, 2018, the National Association of Broadcasters (NAB) and NCTA -- the Internet and Television Association (NCTA) jointly submitted a proposal setting forth a recommendation of how to modernize the election notification process (Joint Proposal) for commercial broadcasters and cable operators. Specifically, the Joint Proposal seeks to “alleviate the burdens associated with the current notification process” by revising our rules as necessary so that

a commercial broadcast TV station would be required to send notice of its must carry or retransmission consent election to a cable operator only if the station changed its election status from its previous election. In those cases, the broadcaster would send its notice to an email address listed in the cable operator’s online public file or in the FCC’s Cable Operations and Licensing System (COALS) database, for cable operators that do not have an online public file.

While the proposal’s terms are limited to commercial broadcast stations and cable operators, the types of entities that are members of NAB and NCTA, NAB “believes these rules should apply uniformly to all MVPDs.” NAB also has stated that “There is no reason to limit the proposal’s application to only commercial broadcasters, and no one in the record has suggested doing so. The FCC should allow noncommercial broadcasters to benefit from a modernized notice regime, including by no longer requiring them to ‘elect’ mandatory carriage every three years for satellite providers.” The Joint Proposal suggests that this change be in effect for the 2021-2023 carriage election cycle. The next carriage election deadline is October 1, 2020. Broadcasters would “continue to include copies of their election statements in their online public files.”

7. In order to make this process work, NAB and NCTA propose that a broadcaster e-mail a notice to a cable operator whenever changing its election with respect to one or more of that operator’s systems. Each such change notice must “identify [the broadcast] station call

sign(s), the DMA and the specific change being made in election status,” and include an e-mail address and phone number “in case cable operators have additional questions.” This e-mail address and phone number must also be on the “first page of each of [a broadcaster’s] stations’ public files,” and must be updated if they change. If an operator has multiple systems within a DMA, the notice must identify them individually only if the broadcaster “changes its election for some systems ... but not all.” If a broadcaster is unable to deliver a “change of election” notice to a listed e-mail address due to a problem with the e-mail address or the operator’s ability to receive the e-mail, and is unable to contact the operator using a provided phone number, then the notice will still be considered to have been properly delivered if it is timely placed in the broadcaster’s public file and e-mailed to the Commission.

8. NAB and NCTA suggest that each cable operator “provide a general carriage elections email address, where broadcasters will send their election notices” and a phone number to be used only “in the event of questions as to whether” a notice was received. They propose that this contact information would be on the “first page” of each cable system’s public file, “or in the FCC’s Cable Operations and Licensing System (COALS) database, for cable operators that do not have an online public file.” The proposal contemplates that the contact information must be kept current by the cable operator, and should always be “up-to-date within 60 days of the next carriage election deadline.” In addition, cable operators would be required to “generate a response to the broadcaster’s notification e-mail so that the broadcaster knows its election notice was received,” but this response would “not be considered the cable operator’s affirmation that the broadcast station fully satisfied its notice obligation.”

9. The Joint Proposal suggests updates to the Commission’s online file and COALS databases to implement these proposed changes. Finally, it proposes the creation of a Commission “email address that broadcasters will [carbon copy] when sending election notices



to cable operators.” The Joint Proposal specifically does not propose to change the current default election provisions, and recommends maintaining the status quo with respect to any situation not expressly contemplated in the proposal.

10. The Media Bureau issued a document seeking comment on the Joint Proposal (84 FR 4039, Feb. 14, 2019). Specifically, it asked whether, and to what extent, the Commission should adopt the recommendations set forth in the proposal. Commenters generally support the substance of the Joint Proposal, although DISH and AT&T oppose its application to DBS providers and claim that they have a greater need for triennial notices than other covered MVPDs.

11. *Discussion.* We adopt the Joint Proposal and expand upon it in two significant ways. Specifically, although the Joint Proposal relates to commercial broadcasters and cable operators, we also will apply certain elements of the rules implementing the proposal to NCE stations. We will also apply the new rules to DBS providers. Thus, our new framework will be relevant to all broadcasters with mandatory carriage rights, and all MVPDs responsible for that carriage, except in those narrow cases we separately address in the *Further Notice of Proposed Rulemaking* published elsewhere in this issue of the Federal Register. In the Further Notice of Proposed Rulemaking, we seek comment on whether and how to apply these new rules to broadcast stations and covered MVPDs that do not have access to the online public file and/or COALS. We conclude that it will serve the public interest and enhance administrative efficiency to have a unified approach for carriage election notices.

12. Almost all commenters support the Joint Proposal, and we find that it addresses many of the concerns raised throughout this proceeding by broadcasters and MVPDs alike. For example, ION and the Affiliates and Networks urge us to “adopt the proposal without” revision. Meredith states that the proposal “reduces the opportunity for ‘gotcha’ gamesmanship” and it

supports “this common sense, easily applied, Twenty First Century proposal.” But as noted above and discussed further below, DISH and AT&T, the two existing DBS providers, object to being subject to the Joint Proposal. In addition, AT&T suggests that we change the election deadline and the timeline for MVPD responses. As emphasized above, in this proceeding we are focused exclusively on the way broadcasters communicate carriage elections and requests. We did not seek comment on, and we do not make, any other changes to the carriage election process or the responsibilities and rights of the parties involved. The “unanswered questions” identified by DISH/AT&T, such as the question of which carriage election controls if a broadcaster files multiple requests or sends multiple notices, are not specific to this proceeding. That is, issues such as these would be handled just as they always have been. For example, our precedent generally holds that in the case where a broadcaster files multiple inconsistent carriage election notices, the first valid election is binding. ACA also proposed revisions to our rules “with respect to notices that cable operators are required to deliver to broadcast stations.” After filing comments, but before filing ex partes, the American Cable Association changed its name to ACA Connects – America’s Communications Association. Although they are outside the scope of this proceeding, the Commission separately is seeking comment on the proposals raised by ACA, and related efforts to “extend[] the benefits of electronic delivery” to MVPD notices. Pine Belt Communications (Pine Belt) asks us to “review the extreme increases in broadcast retransmission rates.” This subject is beyond the scope of this proceeding and is therefore not addressed in this Order. Under our new approach, broadcasters will make their carriage elections by placing them into their online public files, and they will be required to provide a separate electronic notice of those elections to relevant MVPDs only when and if they change their election from the previous election period. This includes not only stations that are already being carried on the MVPD, but also stations announcing their intent to be carried by new systems or a

new provider under §§ 76.64(k) and 76.66(d)(2) of our rules, or new broadcast television stations electing carriage under § 76.64(f)(4) or § 76.66(d)(3)(ii). NCE stations that are currently being carried will place only a one-time DBS carriage request in their public file. Thus, only a limited number of notices will need to be sent to MVPDs and these will be sent via e-mail instead of via paper mail. In addition, we require broadcasters and DBS providers to upload to their online public files both an e-mail address and a phone number for purposes of carriage related inquiries, and we require cable operators to upload the same information in COALS. This contact information must be uploaded no later than July 31, 2020 and must be kept up-to-date thereafter.

### **Application of Joint Proposal to Broadcasters**

13. *Commercial Television Stations.* We largely adopt the election notification framework suggested in the Joint Proposal with respect to commercial broadcasters. The first component of our new framework for commercial broadcast TV stations is that they will upload a single triennial carriage election statement to their online public files, a streamlining of their current obligation to post and retain separate election statements for each MVPD by which they are carried. This filing will constitute the formal carriage election of the station that is required by the statute. Thus, a failure to timely upload the statement will result in a default election, as well as a violation of the broadcast public file rule. To the extent a commercial broadcaster makes different elections with respect to different MVPDs, the election statement included in the public file must reflect those differences. If a station makes a uniform election, a blanket election statement for the relevant DMA will suffice. For example, its statement could be as simple as “[INSERT CALL SIGN] elects [must-carry/retransmission consent] on all MVPDs in the [INSERT DMA NAME] Designated Market Area for the 2021-2023 carriage cycle.” If the station is making different elections with respect to different MVPDs, however, its statement must reflect those differences. Furthermore, any change notices sent to MVPDs must be

attached to this election statement. Election statements must be uploaded to a station's public file by the triennial deadline currently specified in our rules.

14. The second component of our new approach is that, if a commercial broadcaster changes its carriage election for a specific covered MVPD, an election change notice must be sent to that MVPD's carriage election-specific e-mail address and attached to the station's election statement in its public file by the carriage election deadline. Such change notices must include, with respect to each station covered by the notice: the station's call sign, the station's community of license, the DMA where the station is located, the specific change being made in election status, and an e-mail address and phone number for carriage-related questions. This contact information must be the same carriage-related contact information posted in the online public file at the time the election notice is sent. Consistent with the Joint Proposal, if the notice is sent to a cable operator, the broadcaster "would need to identify specific cable systems for which a carriage election applies [only] if the broadcaster changes its election for some systems of the cable operator but not all." In addition, the broadcaster must carbon copy ElectionNotices@FCC.gov when sending its carriage elections to MVPDs. A single notice may cover all of a broadcaster's stations, as well as all of a cable operator's systems or all of a DBS provider's served DMAs. Copies of a change notice must be included in the public file of every station affected by that change notice. In this regard, the record in this proceeding suggests that election status changes are the exception rather than the rule, since approximately 15% of its must-carry stations change election status or ownership and/or network affiliation from cycle to cycle.

15. If a broadcaster does not receive a response verifying receipt of its change notice, or gets an indication that the message was not delivered, it must contact the MVPD via the provided phone number to confirm that the notice was received or arrange for it to be

redelivered. The verification e-mail from the MVPD is meant to confirm receipt of the e-mail in a manner similar to a return receipt when sending certified mail. As under the current rules, it is the responsibility of the broadcaster who is sending the notice to ensure that the notice is timely sent and contains all of the required, accurate, information. If the e-mail is timely and properly sent to the MVPD's listed address, but the broadcaster receives no verification and is unable to reach anyone at the provided phone number, the notice still will be considered to have been properly delivered if it was properly copied to the Commission's election notice mailbox and is timely placed in the broadcaster's public file. Similarly, if an MVPD does not maintain a required COALS account or public file, or fails to provide any carriage contact information at all, a broadcaster's election change notice still will be considered to have been properly delivered if it is timely sent to the Commission's election notice mailbox and is timely placed in the broadcaster's public file.

16. *NCE Stations.* Although the Joint Proposal applies only to commercial broadcast stations, we also apply certain elements of it to NCE stations, as suggested by Public Broadcasting. Because NCE stations, unlike commercial stations, cannot elect retransmission consent, we find it appropriate to apply different notice requirements to NCE stations to ensure that they are not unduly burdened. Our current rules require NCE stations to send written election notices to DBS providers every three years, even though these stations only may request mandatory carriage, and are not permitted to "elect" retransmission consent on any MVPD. Public Broadcasting states that "once an NCE-TV station requests mandatory carriage from a cable operator, the carriage request continues, absent a change in circumstances. Thus, there is no requirement that NCE-TV stations 'reelect' mandatory carriage on cable for every three-year cycle." The record provides no justification for modifying this process. Nor do any commenters suggest that we do so. We agree with Public Broadcasting (and NAB) that "re-notify[ing]

satellite carriers” every three years of their request for carriage via “the antiquated method of certified mail” is unnecessary. NAB agrees “[t]here is no reason to limit the proposal’s application to only commercial broadcasters,” and that we “should allow noncommercial broadcasters to benefit from a modernized notice regime.” As Public Broadcasting also notes, the current “outdated” notice requirements have recently resulted in “[h]undreds of thousands of members of the public” losing access to some “noncommercial educational public television service” in the *Minority Television Project* case. In that case, the Media Bureau denied a must carry complaint because the broadcaster failed to follow the current election notice rules.

Minority Television Project, Inc., is the licensee of independent non-commercial television station KMTP-TV, San Francisco, California (KMTP). KMTP sent a letter to DISH Network L.L.C. (DISH), electing mandatory carriage on DISH throughout the San Francisco-San Jose-Oakland DMA for the 2018-2020 election cycle. The Bureau stated that the “letter included all of the information that is required by [s]ection 76.66(d)(1) of the Commission’s rules,” and was timely mailed. It was sent, however, via the United States Postal Service’s Priority Express Mail service. Because § 76.66(d)(1)(ii) of our rules required that it be sent through the United States Postal Service as first-class certified mail, return receipt requested, the Bureau determined that KMTP did not comply with the rules and that KMTP is thus not entitled to carriage on DISH anywhere in their market during the current three -year election cycle.

17. Just like commercial stations seeking mandatory satellite carriage, NCE stations are required pursuant to section 338 of the Act to “request” carriage from DBS providers. DBS providers must retransmit eligible stations only “upon request.” DISH/AT&T assert that “[t]his is [ ] the reason why noncommercial educational stations must file carriage election letters every election cycle with DBS providers, but not with cable systems.” We disagree, because the statute does not require that NCEs repeatedly re-notify DBS providers about their carriage

request. We find, instead, that by uploading and retaining a carriage request in their online public files, an NCE station will have satisfied the statutory requirement in section 338(a) to “request” carriage. Although we recognize that the *SHVIA Order* required NCE broadcasters to make requests anew every three years, we find no bar in the statute to permitting NCE broadcasters to make a single notification to DBS providers. Although DISH/AT&T claim that “there is a real and practical need” for every broadcast station asserting its must-carry rights (including NCE stations) to send a triennial election notice to DBS providers, we do not agree for the reasons discussed below. DISH/AT&T argue that this need arises because DBS providers have a more limited ability than cable operators to gather information about mandatory carriage stations and need the triennial notices in order to find out about stations’ content, ownership, and tower location. We note, however, that none of this information is required to be provided in triennial carriage election notices. As the Commission found when first implementing the DBS carriage rules, however, “carriers need some measure of control in configuring their satellite systems to meet their statutory obligations,” and as a result both commercial and NCE stations were required to make carriage requests by consistent deadlines. This need for “some measure of control” persists. Therefore, we will require each NCE station to make a request for DBS carriage via the placement of a carriage statement into its public file no later than the next carriage election deadline of October 1, 2020. New requests for carriage by NCE stations must be sent to an MVPD’s “carriage election-specific” e-mail address and retained in the station’s public file “for the duration of any period to which the request applies.” When the new request is from an existing NCE station that is not being carried by an existing MVPD, the NCE must e-mail a copy of its request by the next carriage election deadline, and must be carried by the MVPD beginning with the next carriage cycle. Each such statement must list the station’s call sign, the station’s community of license, and the DMA where the station is located and for which

is it requesting carriage. For example, such a request statement could be as simple as “[INSERT CALL SIGN] requests carriage on DBS providers serving the [INSERT DMA NAME] Designated Market Area.” The statement must be retained in the NCE station’s public file. These requirements will constitute new obligations for NCE stations. NCE stations are required to place requests for mandatory carriage on a cable system in their public files, but there is no triennial carriage election requirement for NCE stations with respect to cable systems. However, because we are relieving NCE stations of repeated triennial notice obligations, including the obligation to send carriage requests via certified mail to DBS providers, this limited application of the Joint Proposal framework to these stations will result in a significant and meaningful reduction in their overall regulatory burdens.

18. *Broadcaster Contact Information.* All broadcasters subject to our new rules must provide an e-mail address and phone number in their public files for carriage-related questions no later than July 31, 2020, approximately 60 days prior to the 2020 carriage election deadline, and maintain up-to-date contact information at all times thereafter. This e-mail address and phone number need not be dedicated exclusively to carriage issues, so long as the individuals answering them are prepared to address carriage issues. The Commission will ensure that this information appears on the first page of the station’s online public file. This proposed requirement has been roundly endorsed by the broadcasters themselves, and no commenter opposes it. As ION compellingly argues, “creating better, more certain lines of communication between broadcasters and cable operators concerning election issues will inevitably lead to a more cooperative process.” ION PN Comments at 1. The Affiliates and Networks are “particularly pleased” with this reciprocal contact information requirement, cheering the “spirit of cooperation” it embodies. DISH/AT&T “estimate that during the three-year election period they may each contact about a quarter of their must-carry stations regarding technical and/or



programming related issues,” and it is “thus essential that DBS providers have updated information for these stations,” provided via the triennial election notices. A centralized electronic repository of contact information that is readily accessible through the Commission’s online public file should make it at least as easy, if not easier than it is today, for an MVPD to find a specific phone number or e-mail address. We agree with the suggestion in the Joint Proposal that both an e-mail address and a phone number should be provided for each station, so that there is an alternative means of communication if the other one fails. Broadcasters will be required to respond as soon as is reasonably possible to carriage questions from MVPDs.

19. *Application of Joint Proposal to MVPDs.* Under our new rules, each covered MVPD will be required to provide a designated carriage election e-mail address, where broadcasters will send election change notices, and a phone number for broadcasters to use in the event of questions as to whether the MVPD received the station’s election notice. We anticipate, but do not mandate, that the e-mail address will be dedicated exclusively to election change notices, but the individuals answering e-mails and phone calls to the designated contacts must be prepared to address carriage issues. Covered MVPDs will be required to respond as soon as is reasonably possible to carriage questions from broadcasters. Each covered MVPD must have a single e-mail address and phone number for carriage issues, regardless of the number of systems operated or markets served. All cable operators will provide this contact information via COALS, and the Commission will ensure that the information provided in COALS is automatically transferred to the online files of cable operators that also have an online public file, while the DBS providers will input the information directly into their online public files. Cable systems with fewer than 1,000 subscribers are not required to maintain an online public file. As with broadcasters, the Commission will ensure that this information appears on the first page of the MVPD’s online public file. Covered MVPDs must provide their contact information by July

31, 2020, and maintain up-to-date contact information at all times thereafter. MVPDs are responsible for the accuracy and availability of this contact information, and broadcasters may rely on its accuracy at any time. Because covered MVPDs are already required to provide some contact information to the public, this additional carriage contact obligation, and the requirement to keep this information up to date, should pose virtually no burden on covered MVPDs.

20. As suggested in the Joint Proposal, we also will require covered MVPDs to verify receipt of an e-mailed election change notice, via e-mail sent back to the originating address, as soon as is reasonably possible. This will not constitute a statement that “the broadcast station fully satisfied its notice obligation,” but rather simply will indicate that the notice e-mail was received. In other words, the verification e-mail is meant to confirm receipt of the email in a manner similar to a return receipt when sending certified mail. As under the current rules, it is the responsibility of the broadcaster who is sending the notice to ensure that the notice is timely sent and contains all of the required, accurate, information. Although we anticipate that these verification e-mails will be generated automatically in most cases, we require only that they be sent expeditiously. A timely and correct notice of a change in election that is sent to the e-mail address provided by the MVPD, carbon copied to ElectionNotices@FCC.gov, and placed in the station’s public file, must be honored by the MVPD.

21. Though the Joint Proposal related to cable election notices, we are extending the rules to DBS providers as well. We are persuaded by NAB that having different sets of rules for cable and DBS “will only confuse the carriage election process and make it more difficult for broadcasters to ensure they have provided proper notice to all relevant MVPDs.” We disagree with DISH/AT&T that there are compelling reasons not to apply this updated process to them. They claim that “no party has explained – or even attempted to explain – how mailing, at most, two letters once every three years. . . is burdensome.” DISH/AT&T observe that we “need not

have identical carriage election” notice procedures for DBS and cable, and that, “for example, the carriage election defaults are different.” Even granting that mailing these triennial letters imposes only a minimal burden on mandatory carriage stations, the fact that they do not send these letters to cable operators shows that it is an unnecessary burden. Indeed, the different carriage election defaults emphasized by DISH/AT&T increase the importance of modernizing the process for cable and DBS in a consistent way. As some small independent and noncommercial stations have learned, simply “mailing a letter” to a DBS provider is not, in fact, enough to ensure carriage under the current rules because carriage rights have been denied based on violations of the current mailing requirement. We believe that adopting a simplified and uniform election notification process will decrease the possibility that broadcasters, particularly small broadcasters, will fail to qualify for carriage based on technical noncompliance with our rules.

22. We also disagree that DBS providers have a greater need for the triennial notices than their cable counterparts and therefore that the methodology in the Joint Proposal should not apply to them. DISH/AT&T note that “stations may change content, ownership, and sometimes locations” between elections, and claim that unlike the cable operators that “have a local or, at least, a regional presence and are thus more aware of and familiar with these station changes . . . DBS providers may never have any contact with” stations that do not actively negotiate carriage agreements. According to DISH/AT&T, they therefore have a greater need for “triennial election notices [from mandatory carriage stations specifically] to update records and determine carriage obligations for the next three years,” because sometimes the changes mean the station is “not always eligible for continued carriage.” AT&T also “estimates that approximately 15% of its must-carry stations change election status or ownership and/or network affiliation from cycle to cycle.” However, broadcasters are not required to provide either “ownership” or “network

affiliation” information in carriage election notices. Therefore, the number of stations that change election status is only a subset of the 15% of stations that AT&T references in its filing. Moreover, because the evidence in this proceeding shows that only a minority of stations elect must carry, there likely would be a very small number of stations that would change either to or from must-carry status in any given election cycle. Information about content, ownership, and tower location, however, is not required to be provided to the DBS providers by broadcasters in triennial election notices. If broadcasters are voluntarily supplying this information to the providers today, nothing in our new rules will prohibit their continuing to do so in the future.

23. We note that our updated election notification process specifically addresses a significant concern raised by DISH earlier in this proceeding. The NPRM asked whether the Commission should revise our rules such that broadcasters would be required to place election notices in the public file instead of mailing them. DISH contended in response that this would be “unworkable for MVPDs” unless notices were also sent directly to them, because MVPDs would have to “search hundreds of public files for new election requests.” Our revised rules ameliorate that potential problem by ensuring that notice of any new or changed carriage request is sent via e-mail directly to any affected MVPD. By eliminating the “clutter” of hundreds of election notices that simply reaffirm an existing election, these rules will aid DBS providers in recognizing and focusing on stations whose election status has changed.

24. Indeed, the fact that election change notices will be e-mailed directly to MVPDs significantly undercuts the DBS providers’ contention that the new rules will impose a large administrative burden. DISH/AT&T note that they each carry more than 1,300 broadcast stations nationwide and maintain that it “is not feasible for DISH and DIRECTV to manage that number of carriage election notifications through e-mails and phone calls.” Under our new rules, however, the DBS providers will have to manage notices from only the small fraction of stations

changing their carriage election status in any given cycle. Although DISH and AT&T have claimed throughout this proceeding that e-mail “does not provide the necessary level of certainty for the carriage election process,” other commenters disagree. Nexstar notes that given “the pervasive use of the internet and e-mail communications. . . e-mail distribution is not a big ask or an unreliable delivery method.” Furthermore, although DISH accurately notes that e-mail messages can introduce new complexities and challenges, such as navigating through spam filters that might prevent notices from being received, we note that it alleviates others, like the danger of physical mail being lost within a mailroom. Moreover, as the Joint Proposal suggests, we are requiring that both broadcasters and MVPDs also post phone numbers, so there will always be an alternative means for stations and MVPDs to contact each other and resolve carriage issues.

25. *Commission Responsibilities.* As suggested in the Joint Proposal, the Commission must do its part to implement this new carriage election process. Specifically, we will update COALS, providing fields for cable operators to enter their carriage election notice e-mail address and phone numbers. The information entered will be displayed on the first page of COALS, and we will also transfer this information as necessary so that, for operators with an online public file, the contact information appears on the front pages of those public files. We also will update the online public file so that broadcasters and DBS providers can enter this information directly into their public files, where again it will be displayed on the first page.

26. In addition, the Commission will create an “election notice verification” e-mail inbox that broadcasters must carbon copy when notifying an MVPD of a changed election, located at ElectionNotices@FCC.gov. Like the MVPD e-mail address, this Commission address will provide a verification response to assure broadcasters that the e-mail has been received. In the case of a dispute between a broadcaster and MVPD about an election change notice, the

Commission will make available a copy of any e-mail that was received in the inbox.

DISH/AT&T propose that, every three years, “the Commission [] publish a list of all broadcaster carriage election [change] notices that it receive[s] via its ElectionNotices@fcc.gov email inbox.” The DBS providers contend that “the Commission publishing this list shortly after October 1” will “ensure that MVPDs are aware of all elections the Commission considers valid.” The process we adopt today places minimal burden on DBS providers. We reject DISH/AT&T’s proposal; it introduces significant and unnecessary administrative complexity given that any relevant emails sent to ElectionNotices@fcc.gov will be provided to the parties in the event of a dispute.

27. *Timing.* We adopt the Joint Proposal suggestion that “this new framework tak[e] effect in the 2020 election” for the 2021-2023 carriage election cycle. Therefore, broadcasters must upload their carriage elections into their public files and e-mail required notifications to covered MVPDs by October 1, 2020. This suggestion received widespread support in the record. ION and the Affiliates and Networks urge us to “adopt the proposal” without change. Meredith “hopes it can be put into place for the 2020 election.” Nexstar endorses the idea that “all 2017 carriage elections would carry forward” beginning with the 2020 election. Though smaller cable operators say that they should be exempt from the new rules until 2023, we conclude that it will be feasible for the cable operators, including small operators, to comply in a timely way with the limited requirements imposed on covered MVPDs under our new rules.

28. ACA, with Pine Belt’s support, “opposes the proposal’s timeline as unrealistic for those small providers that would rely on COALS to make their contact information available online to broadcasters.”<sup>1</sup> ACA notes that it is not opposing the Joint Proposal, “despite the fact that doing so means imposing new requirements on its members,” and observes that it would be

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<sup>1</sup> After filing comments, but before filing ex partes, the American Cable Association changed its name to ACA Connects – America’s Communications Association.

“irresponsible” and “cause significant confusion” to begin educating its members about a regulatory change that has not yet been adopted and a recordkeeping obligation that “cannot even be met until the FCC has updated COALS.” ACA “does not believe that the Commission will be able to implement the proposal quickly enough to give these operators sufficient time to meet their new obligations.” They cite the need to publish this Report and Order, seek and receive approval from the Office of Management and Budget under the Paperwork Reduction Act, and make technical updates to Commission databases, claiming that these efforts will “leav[e] small cable operators with just a few months at most to update their information in COALS.”

Accordingly, ACA proposes an exception to the electronic notice aspect of these rules for small cable operators. Under ACA’s proposal, if a “broadcaster cannot identify an e-mail address for an operator with a system serving fewer than 1,000 subscribers in its market, or if it does not receive an e-mail from such an operator confirming receipt of its notice, the broadcaster must send the notice to that system operator via certified mail.” NAB replies that “it is absurd to think that businesses, even smaller ones, would not be able to add an email address and phone number to a single electronic file within a few months,” and that “nothing prohibits ACA from starting immediately to alert its members about upcoming regulatory changes.” It also expresses concern that the ACA proposal “would significantly complicate the 2020 election cycle.” ACA, in turn, stated, “[a]llowing broadcasters to do what they have been doing for nearly two decades cannot possibly be considered complicated.”

29. Although we recognize ACA’s concerns, we find that the burdens of our new rules will be minimal for small cable operators and that it will not take any entity a great amount of time to come into compliance. We note that, although this is a new obligation, small cable operators are familiar with COALS, which they are already required to keep up-to-date. There should be ample time for broadcasters and MVPDs to prepare for the new process and update

their existing database entries with a single e-mail address and phone number. We therefore adopt the Joint Proposal's suggested timing and plan to update our databases so that broadcasters and MVPDs will be able to add their carriage election contact information no later than July 31, 2020, in their public files or COALS, as appropriate. The Commission will announce the completion of these system updates via public notice.

### **Procedural Matters**

30. *Paperwork Reduction Act Analysis.* This Order contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the *Federal Register* at a later date seeking these comments. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. We have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Act Analysis.

### **Final Regulatory Flexibility Analysis**

31. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) (83 FR 2119, Jan. 16, 2018) in this proceeding. The Commission sought written public comments on proposals in the *NPRM*, including comment on the IRFA. The



Commission received no comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

32. *Need for, and Objectives of, the Report and Order.* In this Report and Order, we modernize our rules requiring broadcasters to submit their triennial carriage election notification via certified mail. First, to provide notice, commercial broadcasters will upload an election notice to their public files every election cycle, and noncommercial educational stations must upload to their public files no later than October 1, 2020 their notice to DBS operators requesting carriage. Additionally, commercial broadcasters will now email MVPDs a carriage election notification only if they are changing their election from the previous cycle or if they are submitting their election for the first time. Second, MVPDs must respond to the broadcasters as soon as reasonably possible, acknowledging receipt of the notification. Third, both broadcasters and MVPDs must maintain an up-to-date phone number and email address on the Commission's public database. We conclude that these requirements will relieve burdens and inefficiencies endured by broadcasters and MVPDs caused by the cost and time required to comply with these rules. Through this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

33. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were filed in direct response to the IRFA.

34. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the

Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

35. *Cable Companies and Systems (Rate Regulation Standard).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that all but nine of the 4,600 cable operators active nationwide are small under the 400,000 subscriber size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Of the 4,600 active cable systems nationwide, we estimate that approximately 3,900 percent have 15,000 or fewer subscribers, and 700 have more than 15,000 subscribers. Thus, under this standard as well, we estimate that most cable systems are small entities.

36. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual

revenues exceed \$250 million. The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules.

Although it seems certain that some of these cable systems operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

37. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The open video system framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2012. According to that source, there were 3,117 firms that in 2012 were Wired Telecommunications Carriers. Of these, 3,059 operated with less than 1,000 employees. Based on this data, the majority of these firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The

Commission further notes that it has certified approximately 45 OVS operators to serve 116 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

38. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, "Wired Telecommunications Carriers," which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2012 indicate that in that year there were 3,117 firms operating businesses as wired telecommunications carriers. Of that 3,117, 3,059 operated with 999 or fewer employees. Based on this data, we estimate that a majority of operators of SMATV/PCO companies were small under the applicable SBA size standard.

39. *Direct Broadcast Satellite (DBS) Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census

category “Wired Telecommunications Carriers.” The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline business is small if it has fewer than 1500 employees. Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

40. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from

an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999, and 70 had annual receipts of \$50 million or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

41. The Commission has estimated the number of licensed commercial television stations to be 1,384. Of this total, 1,264 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394. The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

42. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on

this basis and is therefore possibly over-inclusive.

43. There are also 417 Class A stations. Given the nature of these services, including their limited ability to cover the same size geographic areas as full power stations thus restricting their ability to generate similar levels of revenue, we will presume that these licensees qualify as small entities under the SBA definition. In addition, there are 1,968 LPTV stations and 3,776 TV translator stations. Given the nature of these services as secondary and in some cases purely a “fill-in” service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

44. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The Commission anticipates that the rule changes adopted in this *Report and Order* will lead to an overall immediate, long-term reduction in reporting, recordkeeping, and other compliance requirements for all broadcasters and MVPDs, including small entities. Specifically, commercial broadcasters will no longer need to produce and mail several letters to MVPDs, many of which are duplicative to ensure that they are received by the MVPD. Likewise, noncommercial broadcasters will be relieved of the burden of mailing their election notices to DBS providers every three years and will only have to upload a one-time notice of their carriage request to their public files. Although MVPDs now have the obligation of maintaining an up-to-date phone number and email on Commission-hosted databases, this is a de minimis burden. Alternatively, this burden is outweighed by the reduction of letters and duplicative notices that MVPDs previously had to review.

45. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or

reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”

46. *Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule.*

None

**Ordering Clauses**

47. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 325, 338, 614, 615, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 325, 338, 534, 535, and 573, this Report and Order IS ADOPTED and WILL BECOME EFFECTIVE 60 days after publication in the *Federal Register*.

48. IT IS FURTHER ORDERED that parts 25, 73, and 76 of the Commission’s rules ARE AMENDED as set forth in the Final Rules of this Report and Order. These rules contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act and compliance with these amended rules will be required after the Commission publishes a document in the Federal Register announcing such approval and the relevant compliance date.

49. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.



50. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects**

**47 CFR Part 25**

Communications common carriers, Communications equipment, Equal employment opportunity, Radio, Reporting and recordkeeping requirements, Satellites, Securities.

**47 CFR Part 73**

Civil defense, Communications equipment, Defense communications, Education, Equal employment opportunity, Foreign relations, Mexico, Political candidates, Radio, Reporting and recordkeeping requirements, Television.

**47 CFR Part 76**

Administrative practice and procedure, Cable television, Equal employment opportunity, Political candidates, Reporting and recordkeeping requirements.  
Federal Communications Commission.

**Katura Jackson,**  
*Federal Register Liaison Officer,*  
*Office of the Secretary.*

## **Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 25, 73, and 76 as follows:

### **PART 25 – SATELLITE COMMUNICATIONS**

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

2. Amend § 25.701 by adding paragraph (f)(6)(i)(D) to read as follows:

#### **§ 25.701 Other DBS Public interest obligations.**

\* \* \* \* \*

(f) \* \* \*

(6) \* \* \*

(i) \* \* \*

(D) Each satellite carrier shall, no later than July 31, 2020, provide an up-to-date email address for carriage election notice submissions and an up-to-date phone number for carriage-related questions. Each satellite carrier is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.

\* \* \* \* \*

### **PART 73 – RADIO BROADCAST SERVICES**

3. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

4. Amend § 73.3526 by revising paragraph (e)(15) to read as follows:

#### **§ 73.3526 Local public inspection file of commercial stations.**

\* \* \* \* \*

(e) \* \* \*

(15) *Must-carry or retransmission consent election.* Statements of a commercial television or Class A television station's election with respect to either must-carry or re-transmission consent, as defined in §§ 76.64 and 76.1608 of this chapter. These records shall be retained for the duration of the three year election period to which the statement applies. Commercial television stations shall, no later than July 31, 2020, provide an up-to-date email address and phone number for carriage-related questions and respond as soon as is reasonably possible to messages or calls from multichannel video programming distributors (MVPDs). Each commercial television station is responsible for the continuing accuracy and completeness of the information furnished.

\* \* \* \* \*

5. Amend § 73.3527 by revising paragraph (e)(12) to read as follows:

**§ 73.3527 Local public inspection file of noncommercial educational stations.**

\* \* \* \* \*

(e) \* \* \*

(12) *Must-carry requests.* Noncommercial television stations shall, no later than July 31, 2020, provide an up-to-date email address and phone number for carriage-related questions and respond as soon as is reasonably possible to messages or calls from multichannel video programming distributors (MVPDs). Each noncommercial television station is responsible for the continuing accuracy and completeness of the information furnished. Any such station requesting mandatory carriage pursuant to part 76 of this chapter shall place a copy of such request in its public file and shall retain both the request and relevant correspondence for the duration of any period to which the request applies.

\* \* \* \* \*

## **PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

6. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

7. Amend § 76.64 by revising paragraph (h) to read as follows:

### **§ 76.64 Retransmission consent.**

\* \* \* \* \*

(h)(1) On or before each must-carry/retransmission consent election deadline, each television broadcast station shall place a copy of its election statement, and copies of any election change notices applying to the upcoming carriage cycle, in the station's public file.

(2) Each cable operator shall, no later than July 31, 2020, provide an up-to-date email address for carriage election notice submissions with respect to its systems and an up-to-date phone number for carriage-related questions. Each cable operator is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.

(3) A station shall send a notice of its election to a cable operator only if changing its election with respect to one or more of that operator's systems. Such notice shall be sent to the email address provided by the cable system and carbon copied to ElectionNotices@FCC.gov. A notice must include, with respect to each station referenced in the notice, the:

- (i) Call sign;
- (ii) Community of license;
- (iii) DMA where the station is located;
- (iv) Specific change being made in election status;

(v) Email address for carriage-related questions;

(vi) Phone number for carriage-related questions;

(vii) Name of the appropriate station contact person; and,

(viii) If the station changes its election for some systems of the cable operator but not all, the specific cable systems for which a carriage election applies.

(4) Cable operators must respond via email as soon as is reasonably possible, acknowledging receipt of a television station's election notice.

\* \* \* \* \*

8. Amend § 76.66 by removing and reserving paragraph (c)(5) and revising paragraphs (d)(1) and (d)(3)(ii) to read as follows:

**§ 76.66 Satellite broadcast signal carriage.**

\* \* \* \* \*

(d) \* \* \*

(1) *Carriage requests.* (i) An election for mandatory carriage made by a television broadcast station shall be treated as a request for carriage. For purposes of this paragraph (d), the term election request includes an election of retransmission consent or mandatory carriage.

(ii) Each satellite carrier shall, no later than July 31, 2020, provide an up-to-date email address for carriage election notice submissions and an up-to-date phone number for carriage-related questions. Each satellite carrier is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.

(iii) A station shall send a notice of its election to a satellite carrier only if changing its election with respect to one or more of the markets served by that carrier. Such notice shall be sent to the email address provided by the satellite carrier and carbon copied to

ElectionNotices@FCC.gov.

(iv) A television station's written notification shall include with respect to each station referenced in the notice, the:

- (A) Call sign;
- (B) Community of license;
- (C) DMA where the station is located;
- (D) Specific change being made in election status;
- (E) Email address for carriage-related questions;
- (F) Phone number for carriage-related questions; and
- (G) Name of the appropriate station contact person.

(v) A satellite carrier must respond via email as soon as is reasonably possible, acknowledging receipt of a television station's election notice.

(vi) Within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing:

- (A) Those local television stations it will not carry, along with the reasons for such a decision; and
- (B) Those local television stations it intends to carry.

(vii) A satellite carrier is not required to carry a television station, for the duration of the election cycle, if the station fails to assert its carriage rights by the deadlines established in this section.

\* \* \* \* \*

(3) \* \* \*

(ii) A new television station shall make its election request, in writing, sent to the satellite carrier's email address provided by the satellite carrier and carbon copied to

ElectionNotices@FCC.gov, between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by paragraph (d)(1)(iv) of this section.

\* \* \* \* \*

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